LAW OFFICE OF
AARON M. GOLDSMITH
A PROFESSIONAL CORPORATION
225 Broadway, Suite 715
New York, NY 10007
(Tel.) - (914) 588-2679
(Tel.) – (212) 566-6212
(Fax) - (212) 566-8165
www.aarongoldsmithlaw.com

★ Admitted in NY and CT

July 28, 2017

Via mail and ECF
US DISTRICT COURT, SDNY
Honorable Denise L. Cote, USDJ
500 Pearl Street
New York, NY 10007

Re: ***United States v. Mahmoud Thiam***
17 Cr. 0047 (DLC)

Dear Honorable Madame:

Our office represents the defendant, MAHMOUD THIAM, in the above referenced case. Mr. Thiam's sentencing hearing is scheduled for August 25, 2017 at 10am before this Honorable Court. This letter is respectfully submitted pursuant to Rule 32 of the Federal Rules of Criminal Procedure and advances several considerations that Mr Thiam believes will assist the Court in crafting a sentence which serves both the interests of justice and the sentencing goals set forth in 18 U.S.C. § 3553(a). Mr. Thiam respectfully requests that the Court impose a sentence of 60 months, which is below the sentencing guidelines calculated by the Probation Department. This sentence is below the guidelines range and well within the Court's authority under *United States v. Booker*, 542 U.S. 220, 226-227 (2005) and 18 U.S.C. § 3553(a).

Mr Thiam was arrested on December 13, 2016 and has been incarcerated since. Accordingly, Mr. Thiam will have been incarcerated for a period of approximately nine and one half (9 ½) months at the time of sentence.

BACKGROUND

Mr. Thiam was born in Conakry, Guinea in 1966. His father was tortured to death in 1971 as a political prisoner, at the hands of a violent Communist regime that took control at the time. His mother was a registered nurse and survived that violent era when thousands of civilians were tortured and killed for real and perceived opposition to the new regime. At the time, Mr. Thiam and his siblings were smuggled out of the country for their safety. One of his infant cousins had been kidnapped and detained by Government militia in efforts to gain access to the family members trying to escape. The infant was released after several days.

Mr. Thiam relocated to France and lived on his Uncle's farm for several years. He moved to Belgium as a teenager. He came to the United States in the late 1980s to attend college. Mr. Thiam first moved to the Washington, DC, area where he worked and took "English as a Second Language" courses in order to prepare for college. Shortly after coming to America, he began attending college at Cornell University. As a college student in Ithaca, the Guinean regime in power exercised a degree of control of Mr. Thiam, by withholding the "scholarship funds" awarded to him as reparations for the atrocities his family suffered under the Communist regime. With the help of family in Europe, he was able to borrow enough money to complete his college education.

After graduation, he started as an apprentice to a Pitney Bowes salesman. From that experience, he started working for an international commodities firm that specialized in African agricultural and mining products. Mr. Thiam's familial background became a key to his success. The business folded in the wake of changing international legislation. From there, Mr. Thiam started working at Merrill Lynch and rose the ladder to a Senior Vice President position. Mr. Thiam specialized in natural resources and international clientele stemming largely from French Colonial and West African regions. After nearly ten (10) years at Merrill, Mr. Thiam's "team" was purchased by UBS. He worked at UBS for a couple of years prior to being courted into the position of Minister of Mines by the military government that took power in Guinea in 2009. Mr. Thiam begrudging accepted the office after significant pressure from friends and contacts around the world compounded on his sense of duty to his native land.

Mr. Thiam married his wife, Fatim, in 1994. The couple has three (3) children: Iman (now age 14), Zahara (now age 17) and Zeinab (now age 19). Iman had previously attended the Dalton School and Zahara had attended Horace Mann. However, the Thiams' fell behind in tuition payments in the wake of their bank accounts being systemically closed and liquidated as a result of his PEP (Politically Exposed Person) status being disseminated.

In addition to the family's banking woes, the instant arrest has crippled Mr. Thiam's ability to earn any money to support his family. In the years following his tenure with the Government of Guinea, Mr. Thiam ran a commodities consulting firm that specialized in mining and natural resources. Since the investigation and resulting arrest, Mr. Thiam's business was completely disrupted. Fatim Thiam has relied heavily on gifts and loans from family to support herself and the children. She has looked for work, was evicted from their previous residence and has been exploring the necessity to move the family back to her native Senegal to live with other family members.

Mr. Thiam suffers from high blood-pressure, high cholesterol and diabetes. He takes "Metformin" daily in order to control the diabetes, and a "statin" drug for his cholesterol.

Mr. Thiam currently has more than sixty thousand ($60,000.00) dollars in credit card debt; several months of rent in arrears that resulted in an eviction and judgment; as well as nearly seven million ($7,000,000.00) dollars in outstanding business loans. Mr. Thiam has outstanding tax liabilities nearing nine million ($9,000,000.00) dollars. He further has a significant debt, amounting to several hundreds of thousands of dollars in unpaid legal fees to former Counsel and fees owed to the accounting firm that handled his business and personal taxes. Immediately after his arrest, the family sold his Range Rover for a price of twenty-six thousand ($26,000.00) dollars. The proceeds of that sale were largely used to pay tuition bills for his children's school. Despite the ownership of an apartment located at 170 East End Avenue, the property's potential liquidity is "upside down" due to liens on it. Despite the Government's arguments at trial and defendant's wife's name listed as "owner" on the property, the Dutchess County estate is an asset held by a former business partner of Defendant Thiam. As a result, his ability to sell the property to pay debts or fines is wholly undermined.

To state that Mr. Thiam's investigation and arrest has led to a "reversal of fortune" for him and his family is not an understatement. As is stated in the Pre-Sentence Report, Mr. Thiam has no ability to pay any fine that the Court may impose.

THE PRESENTENCE REPORT:

Without conceding his guilt and without waiving any defenses, Mahmoud Thiam has no objection to the following findings and conclusions of the PSR:

- A 2-level increase is warranted as the Defendant was convicted under 18 USC §1956 (PSR ¶24);
- Defendant has a criminal history category of I, due to no prior activity (PSR ¶35).

Objections to the PSR –At this time, Mr. Thiam relies upon his objections to the report that were previously provided to Probation Department and the Court.

PARITY WITH OTHER DEFENDANTS:

Counsel is not aware of other co-defendants in this matter. However, Counsel is aware that a Defendant facing similar charges and circumstances, SAMUEL MEBIAME, was sentenced to a term of incarceration for twenty-four (24) months, before Hon. Nicholas G. Garaufis, USDJ in the Eastern District of New York on May 31, 2017. Mr. Mebiame (**16 Cr 627 (NGG))** was charged with wire fraud and bribery as a result of violating the Foreign Corrupt Practices Act in association with facilitating bribes to public officials in Niger, Chad and Guinea, in exchange for lucrative mining contracts. Mr. Mebiame pled guilty, under 18 USC §371, to "Conspiracy to Bribe Foreign Officials for Mining Licenses." The Complaint articulates several acts of bribery that Mr. Mebiame orchestrated between large mining corporations and the Guinean Government officials – including Minister of Mines – that took over immediately after Defendant THIAM resigned from office. In fact, at least one (1) innocuous recorded conversation between Mr. Mebiame and Defendant THIAM was included in the Government's Rule 16 disclosures in the instant matter.

There are two (2) factual distinctions. First, Mr. Mebiame was not in public office; and Second, Mr. Mebiame was paid by corporations to orchestrate bribes, rather than allegedly receiving the bribe. Yet those distinctions are rendered moot under Guinean Law. As the Court will recall, the sections Guinean Code which were used as a criminal foundation of Defendant THIAM's alleged money laundering, do not distinguish culpability between the briber and bribee. Accordingly, Judge Garaufis' sentence of twenty-four (24) months to Mr. Mebiame is relevant and persuasive in the sentencing of Defendant THIAM. While the overall value of bribery is less than that alleged in Defendant THIAM's case, the sentence imposed against Mr. Mebiame must be viewed as a significant benchmark to measure against and in formulating the sentence of Mr. Thiam.

THE APPROPRIATE SENTENCE:

A. Factors under 18 USC §3553(a)

After affording due attention to Mr. Thiam's individual background and characteristics, it is clear that a sentence below the Guidelines range can still sufficiently achieve the sentencing goals reflected by § 3553(a).

Title 18 USC § 3553(a) tasks the Court with constructing a reasonable sentence that is "sufficient, but not greater than necessary, to comply with the purposes set forth" in 18 USC § 3553(a)(2). In *Gall v. United States*, 128 S.Ct. 586, 597 (2007), the United States Supreme Court found that while the Guidelines serve as "the starting point and the initial benchmark" of a reasonable sentence, the sentencing authority "may not presume that the Guideline range is reasonable" and "must make an individualized assessment based on the facts presented." This obligation cannot be met merely by considering departure options and nothing else. Counsel must argue, and the District Court must consider, any of the reasons that may exist for concluding that a sentence within the parameters of the Guidelines "fails to properly reflect § 3553(a), or perhaps [that] the case warrants a difference sentence regardless." *United States v. Rita*, 551 U.S. 338 (2007). The

Court in *Gall* further "reject[ed] an appellate rule that require[ed] 'extraordinary' circumstances to justify a sentence outside the Guidelines range." Thus, after considering the advisory Guidelines, a sentencing Court has great flexibility when crafting a reasonable sentence. The Court is free to vary from the Guidelines range so that, ultimately, the sentence is narrowly tailored and no greater than is absolutely necessary to sufficiently accommodate the sentencing factors set forth in Title 18 USC § 3553(a). Accordingly, it is respectfully submitted that a sentence below the advisory Guideline range calculated by the Probation Department, is appropriate and warranted under Mr. Thiam's individual set of circumstances.

The Court may impose a below-Guideline sentence after consideration of the following 3553(a) factors:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant (18 U.S.C. § 3553 (a)(1)).

a. The nature and circumstances of the offense

It is indisputable that laundering foreign bribery proceeds is a serious offense. As the Court is aware, Mr. Thiam has no prior history of criminal conduct. Mr. Thiam is fifty (50) years old and led a constructive, law abiding life. The allegations of the offense at trial were not violent. In fact, the Guinean Government witnesses testified at trial that the Joint Venture with CIF/Sonangol was enthusiastically endorsed by most of the Ministers and President of Guinea at the time and most importantly resulted in an influx of tens of millions of dollars that allowed the new Government to operate.

Consideration of this 3553(a) factor suggests that a sentence below the advisory Guidelines is warranted.

b. The history and characteristics of the defendant

Mr. Thiam has no prior convictions. He is an individual who escaped persecution and genocide in his native Guinea. He bounced around and eventually came to America for a college education. He rose to prominence at Merrill Lynch and UBS from his modest beginnings as the apprentice to a Pitney Bowes salesman. He has a wife and three (3) daughters, and has otherwise not displayed any anti-social or criminal behavior.

The 7th Circuit has previously considered the sentence of a defendant with a dissimilar but but arguably comparable history, finding such a history to serve as convincing grounds to impose a below-Guidelines sentence. *See United States v. Baker*, 445 F.3d 987, 992 (7th Cir. 2006)(affirming a sentence of 78 months for distributing child pornography, where guidelines called for 108-135 months, based on defendant's lack of criminal history, relatively young age, religious backgrounds and history of employment and higher education). The 3rd Circuit has similarly affirmed a sentence of 2 years probation and 3 months home confinement for wire fraud despite a Guidelines range of

18-24 months in *United States v. Howe*, 543 F.3d 128 (3d Cir. 2008). There, the Court agreed with the District Court, which deemed the offense—characterized by the Government as a two-year campaign to cover up a six-figure fraud on the Air Force—an "**isolated mistake**" in the context of Howe's entire life.

Counsel's request for leniency for Mr. Thiam does not stem from arrogance, ignorance nor contempt. It solely comes from a desire to satisfy his incarceration sentence and get home to his family in a fashion that better represents his personal history and character. Without admitting any guilt, the Jury's verdict of "guilty" in this case represents an isolated time and series of events in his fifty (50) year life.

(2) The need for the sentence imposed to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense; afford adequate deterrence to criminal conduct; protect the public from further crimes of the defendant; and provide the defendant with needed rehabilitative or other treatment (18 U.S.C. § 3553(a)(2)).

Probation recommends a sentence of 120 months (Count I) to run concurrent with 121 months (Count II) without a mandatory minimum. Such a range is quite significant, especially considering that Mr. Thiam has no criminal history and the offenses are non-violent, non-narcotic offenses. Defendant Thiam's requested sentence of sixty (60) months is not a "slap on the wrist." It is several years of incarceration, followed by other collateral consequences. By no stretch of the imagination is the requested sentence unreasonable for a man of his age with no criminal history, convicted of a "white collar" offense. Such a departure would still serve to appropriately punish Mr. Thiam as an individual, while serving as a significant deterrent to others similarly situated.

For the foregoing reasons, a term of incarceration of 60 months is sufficient to reflect the seriousness of the crime, while balancing the remainder of his 3553(a) factors.

CONCLUSION

Mr. Thiam hopes that the Court has noticed the wide array of factors mitigating the need for a severe "guidelines" sentence.

Accordingly, in consideration of the relevant factors set forth in Title 18 U.S.C. §§ 3553(a) MAHMOUD THIAM respectfully requests that the Court impose a sentence below the calculated guidelines. Mr. Thiam respectfully requests a sentence of *60* months, followed by a period of supervised release. In light of the aforementioned circumstances and characteristics that are unique to this defendant, this sentence will be sufficient but not greater than necessary to achieve the goals reflected by the factors set forth in Title 18 U.S.C. § 3553(a).

Defendant MAHMOUD THIAM respectfully reserves the right to raise additional issues at the time of sentencing. Your Honor's attention to and consideration of this submission is greatly appreciated.

Respectfully Submitted,

s/ Aaron M. Goldsmith

cc: AUSA Elisha Kobre
AUSA Christopher DiMase
AUSA Lorinda Laryea
via email